

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

AMERICAN RE-INSURANCE COMPANY

Claim No. CU-0705

Decision No. CU 2058

Under the International Claims Settlement
Act of 1949, as amended

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by the AMERICAN RE-INSURANCE COMPANY for \$19,954.54, and is based upon the asserted ownership and loss of a debt.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964) 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any right or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 502(1)(B) of the Act defines the term "National of the United States" as a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity.

An officer of AMERICAN RE-INSURANCE COMPANY has certified that it is a New York corporation and that at all times pertinent to this claim, more than 50% of its stock has been owned by nationals of the United States. The Commission holds that AMERICAN RE-INSURANCE COMPANY is a national of the United States within the meaning of Section 502(1)(B) of the Act.

An officer of AMERICAN RE-INSURANCE COMPANY further certifies that its stock is held by approximately 2,125 shareholders of record, more than 99% of whom are nationals of the United States.

Claimant asserts, and the record discloses, that on June 1, 1954 it entered into an underwriting agreement with a group of Latin American insurance companies known as the Latin American Pool, through its manager, Oficinas de Ultramar, S.A., a Cuban entity. The purpose of the agreement was to insure risks in the United States and Canada. Prior to August 1, 1957, claimant issued an insurance policy to the Boston and Maine Railroad for a term of one year from August 1, 1957 to August 1, 1958 against an amount of one-fourth, or \$75,000 of \$300,000 of ultimate net loss sustained by the Railroad in excess of \$150,000. Prior to August 1, 1957, claimant had re-insured one-third of the risk it had assumed with the Boston and Maine Railroad, or \$25,000, with the Latin American Pool through the Pool's agent, Oficinas de Ultramar, S.A.

On November 19, 1957, while both claimant's policy with the Railroad and its reinsurance policy with the Latin American Pool were in effect, the Railroad sustained a loss totalling more than \$450,000. Claimant

paid the Railroad \$75,000 pursuant to its policy, and thereafter demanded payment from Oficinas de Ultramar, S.A., of \$25,000 representing the reinsurance. On March 1 and March 10, 1960 claimant received two payments totaling \$4,708.66 on the reinsurance. Subsequently, an additional amount of \$336.80 was deducted from the total due, this amount representing premiums due to Oficinas de Ultramar, S.A., by claimant. Thus, the total remaining due to claimant under its reinsurance policy with the Latin American Pool was \$19,954.54.

In support of this claim, the claimant has submitted a copy of the reinsurance agreement between it and the Latin American Pool; the insurance policy with the Boston and Maine Railroad; receipts for payments issued by Oficinas de Ultramar, S.A.; correspondence; and copies of excerpts from the Cuban Official Gazette.

The record discloses that Oficinas de Ultramar, S.A. was intervened by Resolution No. 473 pursuant to Law 899, published in the Cuban Official Gazette on October 14, 1960. This corporation was organized under the laws of Cuba and does not qualify as a corporate "National of the United States" defined under Section 502(1)(B) of the Act (supra). Claimant is therefore entitled to file this claim based upon the debt in question which represents a debt of an intervened enterprise within the purview of Section 502(3) of the Act. (See Claim of Edward R. Smith, Claim No. CU-5001.)

Based upon the evidence of record, the Commission finds that claimant was owed the sum of \$19,954.54 by Oficinas de Ultramar, S.A. under its re-insurance agreement with the Latin American Pool and that, because of the act of the Government of Cuba on October 14, 1960 in intervening Oficinas de Ultramar, S.A., the manager of the Latin American Pool, claimant was unable to collect this debt. Accordingly, the Commission concludes that claimant suffered a loss in the amount of \$19,954.54 within the meaning of Title V of the Act as the result of actions by the Government of Cuba.

The Commission had decided that in payment of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be allowed at the rate of 6% per annum from the date of loss to the date of settlement. (See Claim of Lisle Corporation, Claim No. CU-0644.)

Accordingly, the Commission concludes that the amount of the loss sustained by claimant shall be increased by interest thereon at the rate of 6% per annum from October 14, 1960, the date on which the loss occurred, to the date on which provisions are made for the settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that AMERICAN RE-INSURANCE COMPANY suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Nineteen Thousand Nine Hundred Fifty-Four Dollars and Fifty-Four Cents (\$19,954.54) with interest thereon at 6% per annum from October 14, 1960 to the date of settlement.

Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

3 JUL 1968

Leonard v. B. Sutton
Leonard v. B. Sutton, Chairman

Theodore Jaffe
Theodore Jaffe, Commissioner

Sidney Freidberg
Sidney Freidberg, Commissioner

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)